

# **Exhibit 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

In re: )  
PHARMACEUTICAL INDUSTRY ) CA No. 01-12257-PBS  
AVERAGE WHOLESALE PRICE ) MDL No. 1456  
LITIGATION ) Pages 1 - 119

CLASS CERTIFICATION HEARING  
BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
September 12, 2006, 10:25 a.m.

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1 which manufacturers who are before you could be held liable,  
2 if your Honor entertains all these notions, based on products  
3 that aren't even at issue here because of defendants that  
4 aren't even present here. That alone is reason enough to  
5 reject it, but that's a problem that's identified and made  
6 specific in certain of the specific defendant briefs.

7 THE COURT: Well, for the point of understanding  
8 whether someone is appropriately a class member or not,  
9 suppose you had a drug where all the sources were defendants,  
10 would that be a different situation where there was a  
11 significant number of companies that aren't defendants?

12 MR. DODDS: You know, your Honor, the answer is  
13 "no" because we're right back where we started back when I  
14 was RICO man, trying to find ways to avoid Article III  
15 standing. I don't know of any case, and defendants haven't  
16 cited any, where that requirement, that a defendant who wants  
17 to be a class representative here can simply avoid  
18 Article III standing based on some notion that sort of  
19 everybody contributed to it and everybody did it and they  
20 were injured by it. Article III standing is a threshold  
21 requirement that's glossed over by all of these theories that  
22 you've just heard about, all of which, your Honor, by the  
23 way, are after all this time purely theoretical. I mean,  
24 your Honor made the point that there's been extensive  
25 discovery at this point. There's been extensive discovery at

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1 people had for putting a really high AWP if it didn't gain  
2 the market share, regardless of the motive, doesn't it  
3 similarly just hurt the consumer paying for it?

4 MR. DODDS: Your Honor, I suppose it could  
5 theoretically. The problem that you have here is, for  
6 purposes of class certification or for any other purpose, for  
7 that matter, you have no evidence to support any of the  
8 theories that have been presented here; not the leapfrogging,  
9 not the Nash equilibrium.

10 THE COURT: But what about, apart from all that, if  
11 under the statute an older person has a right to pay  
12 20 percent of AWP and it's inflated a thousand percent, isn't  
13 that person harmed?

14 MR. DODDS: I'm sorry, ask your question again,  
15 your Honor.

16 THE COURT: A lot of these people are older people,  
17 right, and they've got cancer?

18 MR. DODDS: Yes.

19 THE COURT: And they purchase a multi-source drug  
20 of a sort that they now can't figure out which company it  
21 was. Apart from why the AWP's were way up here, they  
22 nonetheless are overpaying for their copayment.

23 MR. DODDS: Your Honor, it depends on what the  
24 Medicare allowable is for that particular drug. Let me give  
25 you an example. Let me give you the example that has been

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1 this point, and think about what's happened up to this --

2 THE COURT: Is discovery closed for Track Two?

3 MR. DODDS: Yes, it is, your Honor. The discovery  
4 has been done. The work has been done. And think about  
5 what's happened up to this point in time. When the case  
6 started, your Honor found that the generic drugs, the  
7 multi-source drugs, didn't fit the paradigm and dismissed  
8 them. So they came back and they alleged that this  
9 leapfrogging was going on.

10 Now, Dr. Hartman talks about how it could happen.  
11 I'm not aware of any evidence that shows that it did happen,  
12 that there were any frogs or that there was any leaping,  
13 because if it did, you should be able to look in the Red Book  
14 or the Blue Book and see it. If my client Pharmacia -- all  
15 of our drugs are multi-source drugs -- if my client Pharmacia  
16 sets an AWP for a multi-source drug it has, and another  
17 defendant here decides that it wants to compete with that to  
18 raise the median, it should be a simple matter to read the  
19 read the Red Book, read book Blue Book, read the pricing  
20 publications and see it; but you've never been presented with  
21 any evidence that it happened because it simply didn't.

22 THE COURT: It's not clear to me why it happened,  
23 but let me ask you this, because it wouldn't help them  
24 competitively among each other. It didn't fit the paradigm  
25 as originally given to me, but regardless of why, what motive

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1 given for my client, Pharmacia, okay. One of the class reps  
2 that's been presented for Pharmacia is the estate of  
3 Mrs. Young, and the drug that she supposedly took, allegedly  
4 took, was a drug called SoluCortef, which is a multi-source  
5 drug that is manufactured by many defendants, some of whom  
6 are here, some of whom are not here.

7 Now, our papers talk about whether they can  
8 identify that as our drug, okay, and so I won't belabor  
9 that. But if you look at Mr. Haviland's declaration with  
10 respect to Mrs. Young, you see a bunch of claims information  
11 that shows, here's how much the doctor billed, here's the  
12 Medicare allowable, which was way below what the doctor  
13 billed, here's what the insurer paid --

14 THE COURT: When you say "billed," billed who?

15 MR. DODDS: What the doctor billed for the services  
16 that were provided.

17 THE COURT: To Medicare?

18 MR. DODDS: Correct, what the doctor billed to  
19 Medicare and what the doctor billed to -- well, in this case,  
20 what the doctor billed to the insurers, which were Medicare,  
21 and then there's a supplemental insurer.

22 THE COURT: All right, and Mrs. Young didn't pay  
23 anything?

24 MR. DODDS: Mrs. Young was ultimately billed, I  
25 believe, 31 cents for the first administration and, like,